



**Attorney General  
Betty D. Montgomery**

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September 20, 2001

*Via Federal Express*

Magalie R. Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.,  
Washington, DC 20554

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SEP 21 2001

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Re: WT Docket No. 01-184

Dear Ms. Salas:

Enclosed please find the original and five copies of the comments of the Public Utilities Commission of Ohio in the above referenced case. Please return one time-stamped copy in the enclosed self-addressed, stamped envelope.

Thank you for your consideration in this matter.

Respectfully submitted,

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
The Wireless Telecommunications	)	
Bureau Request for Comment on	)	WT Docket No. 01-184
Wireless Local Number Portability	)	<b>RECEIVED</b>
Forbearance Petition Filed by	)	
Verizon Wireless.	)	SEP 21 2001
		<b>FCC MAIL ROOM</b>

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**COMMENTS OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION AND BACKGROUND**

On July 26, 2001, Verizon Wireless (Verizon) filed a petition for permanent forbearance from the Federal Communications Commission's (FCC's) local number portability (LNP) requirements. The FCC's current rules require wireless providers to make available LNP in the top 100 Metropolitan Statistical Areas (MSAs) by November 24, 2002.

Verizon contends that a permanent exemption from the FCC's requirements is appropriate since commercial mobile radio service (CMRS or wireless) LNP requirements will impose complex technical burdens and expenses that are not justified by tangible economic benefits. Verizon notes that its petition pertains only to wireless LNP obligations and does not apply to the implementation of the FCC's thousand-block number pooling.

On August 7, 2001, the FCC released a Public Notice inviting comment on Verizon's petition. Comments responding to the FCC's Public Notice are due on

or before September 21, 2001. The Public Utilities Commission of Ohio (Ohio Commission or PUCO) hereby submits its comments responding to Verizon's LNP forbearance petition and the FCC's corresponding invitation for public input.

## **DISCUSSION**

As discussed in more detail below, the Ohio Commission has several concerns regarding Verizon's LNP petition. First, customers' inability to port numbers from carrier-to-carrier results in an inefficient use of numbering resources, which is inconsistent with state and federal objectives. Second, there are anti-competitive aspects to Verizon's proposal since fewer customers will be willing to switch from wireline to wireless carriers for their primary local carrier service if they are unable to retain their phone numbers. Verizon's proposal will also result in less competition among wireless providers since customers will be less willing to switch wireless providers to take advantage of more economical calling packages of competing wireless providers if they are unable to retain their wireless phone numbers. Finally, the matter of regulatory parity should be considered. Specifically, since wireless carriers have been afforded many of the pro-competitive benefits associated with the Telecommunications Act of 1996 (1996 Act), then CMRS carriers should also be subject to some of the 1996 Act's pro-competitive obligations.

## **Jurisdiction**

Verizon suggests that the FCC lacks the authority to mandate that CMRS carriers implement LNP.<sup>1</sup> Yet, Verizon also recognizes that the wireless carriers challenged the FCC's authority to mandate wireless LNP implementation and abandoned that effort.<sup>2</sup> The FCC continues to regulate CMRS providers under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, and to require CMRS providers to implement number portability as the FCC deems appropriate.<sup>3</sup>

## **Number Pooling and Impact on Number Exhaust**

Over the past ten years, this country has experienced a rapid increase in number utilization causing a significant drain on our number resources. CMRS providers, such as Verizon Wireless, proudly boast of the growth of CMRS services. As a result of this widespread demand, CMRS providers have contributed to the rapid exhaust of NXX codes. Through technologies such as number portability and number pooling, the exhaustion of number resources can be curtailed. While Verizon Wireless promotes its efforts regarding number pooling, this endeavor by itself will not productively address the issue of number exhaust. Rather, as described below, ubiquitous number porting by CMRS providers must also be deployed in order to allow for maximum number utilization efficiency.

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<sup>1</sup> Verizon Petition at 5 – 6.

<sup>2</sup> *Bell Atlantic Nynex Mobile, Inc. v. FCC*, No. 97-9551, Order (10<sup>th</sup> Cir., March 24, 1999).

<sup>3</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, 11 FCC Rcd 8352 at 153. (Adopted June 27, 1996).

Verizon Wireless states that its participation in number porting will result in the need for a number of technical and operational upgrades, as well as the training of customer service personnel regarding porting. While Verizon's request is motivated by its desire to avoid the effort and expense associated with number porting, its petition fails to recognize that, in the absence of number porting, CMRS customers will necessitate the issuance of a new telephone number. As a result, the limited supply of telephone numbers will be needlessly taxed in light of the fact that the subscriber's original telephone number cannot be immediately reissued, but must be aged for a minimum of 90 days in accordance with the FCC's numbering regulations. Under this scenario, CMRS providers will be forced to prematurely request the issuance of additional NXX codes.

As discussed *infra*, the need for number porting as a remedy for number exhaust should not be an obligation specific to ILECs. Rather, number exhaustion is blind to the type of services provided by the NXX code holder. An incumbent local exchange telephone number is no more valuable than that of a CMRS provider. Therefore, CMRS providers must be required to timely comply with the FCC's number porting requirements before additional NXX codes are inefficiently issued.

### **The Anti-Competitive Aspects of Verizon's Petition**

Verizon's request for a permanent forbearance to offer LNP makes no sense in the emerging competitive wireless market, especially in light of the

accelerated growth of new technology. In fact, a competitive market necessitates the need for LNP, as the ability to change carriers without barriers is a sign of true competition. By not offering wireless LNP, the wireless carriers are stifling their own competition. In its petition, Verizon notes the weighted average of cellular churn in 1996 (1.89%), 1997 (1.89%), and 1998 (1.95%) and characterizes these figures as "persistent levels of churn." Further, Verizon alleges that these figures are an indicator of increasing competition.<sup>4</sup> Verizon's assertion is flawed since these figures actually show an almost non-existent level of churn when, in fact, these figures actually reflect the wireless customers' reluctance to change carriers. One factor attributing to this reluctance is the inability of customers to retain their current wireless numbers. Changing one's telephone number is a great inconvenience to customers. During public hearings on area code exhaust relief, many Ohio consumers have expressed their concern about having to change their phone numbers and have insisted that the ten-digit dialing required in an overlay is preferable to the inconvenience and costs involved in changing phone numbers in a geographic split. In fact, Ohio consumers have repeatedly questioned why the Ohio Commission has not ordered a technology-specific overlay, specifically a permanent wireless overlay, as an option of area code relief.<sup>5</sup> If these numbering concerns are true for wireline customers, they are also true for wireless customers. The Ohio Commission maintains the wireless carri-

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<sup>4</sup> Verizon petition at p. 23.

<sup>5</sup> The wireless objection to technology-specific overlays is a result of the fact that wireless customers would potentially have to change their numbers.

ers' failure to comply with the LNP mandate only exacerbates the problem and will impede competition.

The wireless industry has consistently argued in many venues that FCC policies should be technology-neutral and that they should not discriminate against wireless carriers. By acknowledging the industry's arguments, the FCC has not, for example, allowed technology-specific overlays to be used as an option for area-code exhaust relief. Yet, Verizon's petition is now asking for the application of a discriminatory policy that would excuse the wireless industry from complying with the FCC's non-discriminatory mandate for LNP. For instance, one could argue that the facilities-based Competitive Local Exchange Carriers (CLECs) are in much the same position as the wireless industry. Like wireless, the CLECs did not originate as entrenched monopolies and are, by definition, competitive. However, the FCC believes that it is essential to competition that CLEC customers be able to port telephone numbers to and from such providers. Why should the FCC's position regarding wireless LNP be any different? The CLECs were able to meet the original LNP deadline with no extensions even though they would have dealt with similar issues such as customer service representative training, billing, and other administrative matters noted by Verizon.

Verizon's waiver request could result in less competition among wireless providers. In particular, since more calls are being placed to cellular phones than in the past, if customers are unable to retain their wireless phone numbers, they will be less likely to switch wireless providers to take advantage of more eco-

nomical calling packages of competing service providers. Wireless competition, however, is not limited to competition between the wireless carriers, but also includes that between wireless and wireline. If the wireless industry receives the requested permanent LNP forbearance, this discriminatory practice will definitely suppress wireless/wireline competition. If ILEC/CLEC customers have shown a reluctance to change carriers unless they can keep their phone numbers, why should the option of switching from wireline to wireless not be impacted by this same reluctance? By offering number portability by both the wireline and wireless carriers, the telephone industry as a whole will be offering more options to consumers than ever before. Such a practice can only be seen as a public benefit. This public benefit is one of the main reasons the wireless industry was mandated to offer local number portability initially. The Ohio Commission urges the FCC not to forget the need for this public benefit if it truly wishes to promote competition.

In a compelling example of the need for wireless number portability and the substitution of wireless for wireline service, a high profile non-profit agency in Ohio was recently informed that wireless number portability was not an option. This agency relies upon wireless phones as their primary method of communication and had for some time advertised their wireless numbers to those who may need their services. Unfortunately, the wireless company that served this agency was sold to another wireless provider. This new wireless company refused to port those numbers and insisted that the agency obtain all new numbers. Understandably, the agency was angry and confused as to why



they could not retain their telephone numbers in a situation that was not initiated by the agency. The agency is now faced with significant costs for revising advertising and other printed business communications. They raised their concerns to the level of the Governor's office, which in turn contacted the Ohio Commission. The Governor's office voiced frustration with waivers of the wireless number portability requirements in this situation and has inquired about other similar impacts on wireless customers. The Ohio Commission poses the question that if this policy is unreasonable in today's environment, how can it possibly be considered reasonable in the future? This example exemplifies the need for the FCC to reaffirm its November 24, 2002 deadline for wireless LNP.

### **Regulatory Parity**

The Ohio Commission notes that the wireless industry has enjoyed many of the pro-competitive benefits of the 1996 Act, but has been subject to few of the 1996 Act's pro-competitive obligations. Specifically, in its August 1, 1996 decision in CC Docket Nos. 96-98 and 95-185 (*In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*), the FCC determined that wireless providers met the 1996 Act's definition of telephone exchange service provider. Consequently, the FCC determined that wireless carriers should no longer be classified as access customers of local exchange providers, but instead should be subject to the FCC's local carrier reciprocal compensation and interconnection rules. The overall effect of the

FCC's reclassification was to reduce significantly wireless providers' interconnection expense. First, under the reciprocal compensation regime, CMRS providers are compensated by competing LECs for calls terminating on wireless networks. Second, reciprocal compensation reduces overall CMRS interconnection expense by setting such charges at total element long run incremental cost (TELRIC). Under the FCC's same rules, wireless carriers are not required to provide their potential local competitors unbundled network elements (UNEs) as are their incumbent wireline counterparts.

Taking into consideration the FCC's reclassification of CMRS providers from access customer to local competitor, the Ohio Commission contends that as a matter of regulatory parity, the FCC should also require wireless local service providers to implement LNP by the November 24, 2001 date. That is, if Verizon desires to retain its status as a local carrier for purposes of reciprocal compensation, it must also assume the LNP obligation. Expressed another way, Verizon cannot maintain a self-serving approach to implementing the FCC's rules that are intended to meet the pro-competitive objectives of the 1996 Act.

If the FCC were to grant Verizon's petition, then the FCC must reevaluate the efficacy of its decision classifying wireless carriers as local carriers for the purpose of local interconnection and reciprocal compensation. That is, if the FCC were to grant Verizon's petition for permanent forbearance of the LNP requirements, the FCC should also reclassify Verizon as an access customer. Verizon also submits that the costs to implement LNP are economically prohibitive. Verizon fails, however, to support its waiver request with actual cost data.

In the event such cost support is provided, it should be weighed against the cost savings realized by the wireless industry as a result of the FCC's reciprocal compensation decision.

Additionally, concerning the implementation of wireless LNP, the FCC's August 16, 1996 decision in CC Docket No. 95-116 (*In the Matter of Telephone Number Portability*) required wireline carriers to implement LNP by the fourth quarter of 1998. In that same decision, the FCC required broadband PCS, cellular, and specialized mobile radio providers to make available LNP by June 30, 1999. In support of its wireless LNP policies, the FCC's decision in part reads as follows:

Service provider portability between cellular, broadband PCS, and covered SMR providers is important because customers of those carriers, like customers of wireline providers, cannot now change carriers without also changing their telephone numbers. While we recognize that customers may need to purchase new equipment when switching among such CMRS providers, the inability of customers to keep their telephone numbers when switching carriers also hinders the successful entrance of new service providers into the cellular, broadband PCS, and SMR markets. We believe, therefore, that service provider portability, by eliminating one major disincentive to switch carriers, will ameliorate customers' disincentive to switch carriers if they must purchase new equipment. We believe service provider portability will promote competition between existing cellular carriers, as well as facilitate the viable entry of new providers of innovative service offerings, such as PCS and covered SMR providers. (FCC 96-286 at ¶ 157.)

The PUCO maintains that the FCC's reasoning for requiring the deployment of wireless LNP is as compelling today as it was in 1996. The wireless

industry to date has been granted two extensions of time to implement LNP. Consequently, the FCC must require Verizon (and all other affected wireless carriers) to adhere to the November 24, 2002 LNP implementation date.

#### **STATE COORDINATION GROUP**

On a final matter, the Ohio Commission informs the FCC that it supports the initial comments in this proceeding on behalf of the State Coordination Group (SCG).

#### **CONCLUSION**

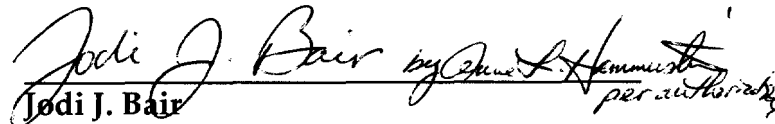
Verizon's petition for permanent forbearance of the wireless LNP requirements must be denied. The inability to port numbers from carrier to carrier results in an inefficient use of numbering resources. Verizon's request works to the detriment of promoting effective competition among various types of carriers. Since wireless carriers have been afforded many of the pro-competitive benefits of the 1996 Act, they too should be responsible for meeting some of its pro-competitive obligations. If Verizon's petition is granted, the FCC should simultaneously revoke its status as a local service provider for the purpose of reciprocal compensation.

The PUCO thanks the FCC for its invitation to file comments in response to Verizon's petition for forbearance.

Respectfully Submitted,

**On Behalf of the Public Utilities  
Commission of Ohio**

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